

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.77 OF 1996

The Commissioner of Income-tax,
Kolhapur .. Applicant.
V/s.
Manganga S.S.K. Ltd. Sangli .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 12TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the applicant.
The Tribunal has referred following questions for the
opinion of this Court, reading as under :

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that by reconciling the two views expressed by the Supreme Court in the cases of C.I.T. Vs.Bijli Cotton Mills (P) Ltd. (116 ITR 60) on one hand and Chowringhee Sales Bureau P. Ltd. (87 ITR 542) and Sinclair Murray & Co. P. Ltd. Vs/ CIT (97 ITR 615) on the other, 'the principle that emerges is that, it is not the point at which or the method by which a receipt was collected by a trader that would determine the taxability of the trading receipt as income, but nature, object and obligation of the receipt'; in the facts of the decision in Bazpur Co-op. Sugar Factory Ltd. (172 ITR 321) and Punjab Distilling Industries Ltd. V. C.I.T. (35 ITR 519) in such reconciliation ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was

justified in law in holding that 'what is relevant to see is not how the amount was collected and when it was collected, but with what obligation it was collected', in total disregard of the Supreme Court's decision in Bazpur Co-operative Sugar Factory Ltd. (172 ITR 321) and Punjab Distilling Industries P. Ltd. (35 ITR 519) and (53 ITR 75) ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the purpose of collecting the deposit, i.e. deduction is to issue shares (but not immediately but after certain time, i.e. the time taken to repay the loans); when the Tribunal itself held in para 7 of its order that the main purpose of collecting the deposits from the cane-growers by way of deduction from the cane price was to secure funds to repay the loans taken from the financial institution, to repay the capital provided by the State Government and then to convert the deposit into share capital ?

4. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in coming to a conclusion that there is total difference and dis-similarity in the Bye-law (unamended) of Bazpur Co-operative Sugar Factory and the Bye-law No.61A reproduced in para 7 of its order ?

5. Whether on the facts and in the circumstances of the case, the Tribunal correctly interpreted the bye-law No.61A of the assessee factory ?

6. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in coming to the conclusion that only when there is adjustment of the deposit or part thereof towards losses, then the amount of the deposit will belong to the assessee and if not, it does not belong to the assessee ?

7. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that during the period the deposits remained with the assessee, they are not regarded as assessee's own money but as only a liability ?

8. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in coming to the conclusion that the depositors as the lenders of the money, are the owners of the money, while the assessee is not the owner of the money and only entitled to use of the money ?

9. Whether on the facts and in the circumstances of the case, and in law, the Tribunal was justified in interpreting the Supreme Court decision in the case of Bazpur Co-operative Sugar Factory (172 ITR 321) in coming to the conclusion that only those deposits which get consumed amount of trading receipts ?

10. Whether in view of the Supreme Court's decision in the case of Bazpur Co-operative Sugar Factory Ltd. (172 ITR 321), the Tribunal was justified in coming to the conclusion that though the collections are in the course of trading operations, yet there are no collections involved except moneys retained and trading operations being only an occasion for retention of money and not consideration for supply of cane, when under the implied contract there were constructive collections involved and when the trading operations involving the deductions from the sugarcane price for non-refundable deposit, was not only an occasion for the deductions of money and depositing it as non-refundable deposit, but the essence of the contract and consideration for supply of sugarcane, without which the supply of sugarcane would not have been possible ?

11. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the fact the interest was being paid on the deposit brings out the relationship of a creditor and debtor ?

12. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the argument that the provisions in the Bye-law No.61A was only a make-belief affair, inspite of the fact that loans and other liabilities were

Nil and the State Government's share capital was insignificant and could have been easily redeemed ?

13. Whether on the facts and in the circumstances of the case, the Tribunal was justified in treating the non-refundable and refundable deposits as loans, and not as income ?

14. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding, in respect of various funds like Chief Minister's Fund, Hutment Fund, Small Savings Scheme, Y.B. Chavan Memorial Fund etc. that the assessee acted as an agent and collections were made as per the directions of the State Government. For spending them on the purposes specified by the State Government and that the collections were made by way of retaining amount of cane price payable to the sugarcane growers and hence are not trading receipt liable to tax ?

15. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in not following the Madhya Pradesh High Court's decision in the case of Jiwajeerao Sugar Co-operative Ltd. V/s. C.I.T. (176 ITR 182) in respect of the Area Development Fund and Cane Development Fund ?

2. Having heard the parties, it would be clear that first 12 questions are nothing but various sheds of Question No.13 referred to for our opinion. Therefore, answer to Question No.13 if given then question Nos.1 to 12 need not be answered by this Court, because answer to Question No.13 takes care of Question Nos.1 to 12.

3. In this view of the matter, Question no.13 is answered on the touchstone of the judgment of the

Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in the affirmative. Similarly, Question No.14 will have to be answered on the touchstone of the judgment of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. (supra)** in the affirmative.

4. So far as Question no.15 is concerned, the Apex Court in the case of **Siddheshwar S.S.K. Ltd. (supra)** has left the said question open. In this view of the matter, we remand this matter back to the Tribunal with respect to Question No.15 wherein the Tribunal shall consider the issue relating to the Area Development Fund and Cane Development Fund in the light of the judgment of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. (supra)**.

5. Accordingly, the reference stands disposed of with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)